

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 5th day of March, two thousand eight.

PRESENT:

HON. GUIDO CALABRESI,
HON. ROBERT D. SACK,
HON. BARRINGTON D. PARKER,
Circuit Judges.

AMADOU OURY DIALLO,
Petitioner,

v.

MICHAEL B. MUKASEY,
UNITED STATES ATTORNEY GENERAL,¹
Respondent.

07-2860-ag
NAC

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1 **FOR PETITIONER:** **Matthew J. Harris, Brooklyn, New**
2 **York.**

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4 **FOR RESPONDENT:** **Jeffrey Bucholtz, Acting Assistant**
5 **Attorney General; Cindy S. Ferrier,**
6 **Senior Litigation Counsel; Tracie N.**
7 **Jones, Trial Attorney, Office of**
8 **Immigration Litigation, U.S.**
9 **Department of Justice, Washington,**
10 **D.C.**

11
12 UPON DUE CONSIDERATION of this petition for review of a
13 decision of the Board of Immigration Appeals ("BIA"), it is
14 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
15 review is DENIED.

16 Amadou Oury Diallo, a native and citizen of Guinea,
17 seeks review of a June 5, 2007 order of the BIA affirming
18 the November 23, 2005 decision of Immigration Judge ("IJ")
19 Gabriel C. Videla, denying his application for asylum,
20 withholding of removal, and relief under the Convention
21 Against Torture ("CAT"). *In re Amadou Oury Diallo*, No. A97
22 849 565 (B.I.A. Jun. 5, 2007), *aff'g* No. A97 849 565 (Immig.
23 Ct. N.Y. City Nov. 23, 2005). We assume the parties'
24 familiarity with the underlying facts and procedural history
25 of this case.

26 When the BIA issues an opinion that fully adopts the
27 IJ's decision, this Court reviews the IJ's decision. See,
28 e.g., *Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir.

1 2005); *Secaida-Rosales v. INS*, 331 F.3d 297, 305 (2d Cir.
2 2003). We review the agency's factual findings, including
3 adverse credibility determinations, under the substantial
4 evidence standard, treating them as "conclusive unless any
5 reasonable adjudicator would be compelled to conclude to the
6 contrary." 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v.*
7 *U.S. I.N.S.*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled*
8 *in part on other grounds by Shi Liang Lin v. U.S. Dep't of*
9 *Justice*, 494 F.3d 296 (2d Cir. 2007) (en banc). However, we
10 will vacate and remand for new findings if the agency's
11 reasoning or its fact-finding process was sufficiently
12 flawed. *Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 391,
13 406 (2d Cir. 2005); *Tian-Yong Chen v. U.S. I.N.S.*, 359 F.3d
14 121, 129 (2d Cir. 2004).

15 We find that the agency's adverse credibility
16 determination is supported by substantial evidence. The
17 IJ's demeanor finding was based on specific examples of
18 Diallo's hesitant and scripted responses to questions, first
19 when he was describing the RPG logo, and then when he was
20 testifying about the incidents surrounding his alleged 2000
21 arrest. See *Li Hua Lin v. U.S. Dep't of Justice*, 453 F.3d
22 99, 109 (2d Cir. 2006). It is well-settled that we will

1 afford significant deference to the fact-finder's assessment
2 of demeanor, particularly where the IJ has supported his
3 finding with specific examples. See *id.*; *Majidi v.*
4 *Gonzales*, 430 F.3d 77, 81 n.1 (2d Cir. 2005). Therefore, we
5 find that the IJ properly relied on Diallo's demeanor in
6 making his adverse credibility determination.

7 The IJ also relied on a series of discrepancies in the
8 record with regard to: 1) the letter allegedly sent by the
9 permanent secretary of the RPG in support of Diallo's
10 application; 2) Diallo's testimony about his failure to
11 provide original identity documents and the authenticity of
12 the copy of his passport in the record; 3) Diallo's
13 description of the beatings he allegedly received while in
14 detention.

15 The IJ noted that Diallo had initially testified that
16 he had received the RPG letter in 1994, when it was clearly
17 issued in 2005. The IJ also expressed concern about the
18 "American standard" dimensions of the letter that allegedly
19 originated in Guinea, a former French colony which uses the
20 metric system. When the IJ gave Diallo the opportunity to
21 explain these inconsistencies, Diallo responded that he had
22 made a mistake as to the dates and that anyone can obtain
23 any "supplies" in Guinea. However, it was reasonable for

1 the IJ to reject these explanations. See *Majidi*, 430 F.3d
2 at 81 n.1. Because these inconsistencies cast doubt on
3 Diallo's political involvement, the IJ properly relied on
4 them in making his adverse credibility finding. Cf.
5 *Secaida-Rosales*, 331 F.3d at 308-09.

6 The IJ also noted an internal inconsistency in Diallo's
7 testimony about his failure to provide original identity
8 documents. Diallo first claimed that it was too difficult
9 for someone in Guinea to write down his address, but when
10 the IJ pointed out to him that his brother sent the RPG
11 letter to him, he claimed that he did not want his identity
12 documents to get lost in the mail. This internal
13 inconsistency in Diallo's testimony is material inasmuch as
14 it casts doubt on his identity. See *Borovikova v. U.S.*
15 *Dep't of Justice*, 435 F.3d 151, 158 (2d Cir. 2006) (holding
16 the failure to establish identity is alone sufficient
17 grounds on which to deny asylum-related relief). In this
18 same vein, the IJ questioned the authenticity of an alleged
19 copy of Diallo's passport, which was the only document in
20 the record that he had provided to establish his identity.
21 Diallo claimed that he had only provided a copy because,
22 after flying from Guinea to the United States, he gave his

1 passport to a stranger in the airport for safekeeping, that
2 the stranger took the passport back to Guinea, and that his
3 uncle recovered it there by chance and sent him a copy. The
4 reasons for the IJ's incredulity as to this testimony are
5 plain from the record. See *Wensheng Yan v. Mukasey*, 509
6 F.3d 63, 67 (2d Cir. 2007). Moreover, the IJ's doubts about
7 Diallo's identity were compounded by the fact that a U.S.
8 visa in Diallo's passport was apparently issued in Gabon,
9 whereas Diallo testified that he had never been to Gabon.
10 These inconsistencies are plainly material as they call into
11 question the threshold issue of Diallo's identity and
12 nationality. Cf. *Borovikova*, 435 F.3d at 157. Moreover, no
13 reasonable fact-finder would be compelled to credit Diallo's
14 explanations.

15 Because the aforementioned inconsistencies and
16 implausibilities, together with the IJ's demeanor finding,
17 provide substantial evidence for the IJ's adverse
18 credibility determination, the denial of asylum was proper.
19 Inasmuch as Diallo based his claim for withholding of
20 removal and CAT relief on the same evidence he used to
21 support his asylum claim, his withholding and CAT claims
22 necessarily fail. See *Paul v. Gonzales*, 444 F.3d 148, 156

1 (2d Cir. 2006)

2 For the foregoing reasons, the petition for review is
3 DENIED. As we have completed our review, any stay of
4 removal that the Court previously granted in this petition
5 is VACATED, and any pending motion for a stay of removal in
6 this petition is DISMISSED as moot. Any pending request for
7 oral argument in this petition is DENIED in accordance with
8 Federal Rule of Appellate Procedure 34(a)(2), and Second
9 Circuit Local Rule 34(d)(1).

10 FOR THE COURT:

11 Catherine O'Hagan Wolfe, Clerk

12 By: _____
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